

Criminal Procedure  
Prof. Deitch  
Spring 2022

### **Motion to Suppress Instructions**

Please review all of the attached materials. You should have:

1. E-mail from your partner with attached summary of the facts,
2. Rubric I will use to grade your work,
3. Sample motion to suppress, and
4. Template within which you will write your motion.

I recommend you begin by skimming the sample motion to suppress to see what these motions typically look like. This will help you manage your time and read your facts more strategically.

After that, look at my grading rubric for a sense of how I will assess your work. You will notice that a majority of the points relate to your persuasiveness, which includes your framing of and engagement with the facts, as well as your legal analysis. However, grammar, spelling, and formatting are also important components of your grade. Be sure to proofread your work. I recommend having the strongest writer in your group do the final review to check for grammar, tone, etc.

- Note: I know that passive voice is generally discouraged, but sometimes there is a strategic reason to use it. If it is apparent that you are using passive voice strategically (e.g., to minimize your client's alleged culpability or to emphasize the police's alleged misconduct), I will not take off points in the grammar section. In fact, if you use active voice in a way that harms your client's position, it may lead to a reduction in persuasion points. All that to say, don't obsess over passive voice at the expense of your client's argument and your zealous advocacy.

Once you have a sense of how to argue for suppression, carefully read the e-mail and summary of facts. You might find it helpful to make notes of the relevant facts you want to highlight and those you may wish to minimize. You might also find it helpful to sketch out your arguments, headings, and case citations.

We will discuss the case in class on March 21. On that day, you will sit with your groups, prepared to discuss.

Writing time:

1. Use the template provided! Be sure to print your names in all the places where your names should go (use the indicators in the template, along with the sample motion, to figure that out – ask me if anything is unclear). On some of the pages, you will find signature lines; please use an electronic signature on the lines and print your name underneath where it says “[NAME].”
2. Your motion to suppress should be around 8-11 pages, not including the service page at the end and the order at the beginning.

3. You should have two parts:
  - a. The Motion to Suppress, and
    - i. Numbered format
    - ii. Summarize the facts persuasively
    - iii. The last numbered paragraphs should persuasively indicate that there was a constitutional violation and should state what you want (see paragraphs 5 and 6 in the sample)
    - iv. Do not cite any law in this part. This section is just for relevant facts and general legal propositions (e.g., “violation of Fourth Amendment protection against unreasonable searches and seizures,” “unlawfully obtained evidence must be suppressed under the exclusionary rule/as fruits of the poisonous tree,” etc.)
  - b. The Memorandum of Law in Support
    - i. Begin by summarizing your argument in about a paragraph (see sample)
    - ii. Use persuasive headings (see sample)
    - iii. Cite case law from class (do not use outside research, except to get general inspiration from other motions or a sense of how the cases from class are used)
    - iv. Apply the relevant law to the facts. Reason by analogy where necessary
    - v. Non-numbered format

Note that the sample motion is based on an allegedly illegal seizure, so it may not be exactly what you’re arguing. I am giving you the sample to show you how to format your motion and how to argue to suppress generally. Don’t use the cases used in the sample motion. Only use the cases we covered in class!

From: Renee Smith <SPartner@DefenseFirm.com>  
To: Associate Attorneys <CrimDefAssociates@DefenseFirm.com>  
Date: March 21, 2022  
Re: Carlson

Dear Associates:

As you may have heard, one of our clients is in a bit of a jam. Paul Carlson was arrested last week and has been charged with commercial burglary.

I have attached a summary of the factual information I have gathered from the police report, Mr. Carlson, and the prosecutor's office. We would like as much of the evidence suppressed as possible.

Please have this submitted by end of day on April 11, 2022. I'm giving your team a few weeks to complete this assignment, so I expect nothing less than perfection. To help you get started, I have asked your paralegal to create a template (attached) to ensure the formatting is in compliance with the court's filing rules. Please draft your motion within the template, so we can get this filed right away.

Very Truly Yours,

Renee Smith  
Defense Firm  
123 Main St., Suite 100  
Columbia, Franklin 99999

## **Background Notes for Paul Carlson Burglary Case – February 16, 2022**

At 8:00 AM on February 1, police received a call from Luxury Auto Dealer (“LAR”), located on a busy street in the upscale neighborhood of Dubell, in the state of Franklin. The manager, Skip Wellington, reported that there appeared to have been a burglary overnight.

Police arrived at LAR at 8:17 AM on February 1 and interviewed the manager. Skip described the scene to the police as follows:

“I got here at 7:45 AM to open up. I went to disarm the alarm system, but it was already disarmed. This was unusual, because I am always the first one here. I walked around to see if someone arrived to work before me and shouted, ‘Hello? Hello?’ It didn’t seem like anyone else was here. The lights were off, too, so I turned those on. I walked to the back office. There’s a window dividing the office from the showroom floor. Well, there was. Whoever broke in shattered the glass and went into the back office. I walked into the office and saw that the keys to the cars in inventory were gone. All the cars we have on our lot here still look like they’re here, but we have a storage lot for our overflow inventory. Our lot here isn’t very big, so we keep most of our inventory off-site at our storage lot about a mile away.”

Police asked Skip if there were security cameras, and Skip confirmed there were cameras both at the dealership and at the storage lot. Skip sent the footage to the detectives at the station to review. Meanwhile, the police on the scene asked Skip to take them to the storage lot, so they could see if any of the vehicles were missing. Skip printed off the inventory list, which shows the vehicles that should be there, and accompanied the police to LAR’s off-site storage lot.

By comparing the inventory list to the vehicles on the lot, the police, with Skip’s assistance, identified six (6) missing vehicles with a total value of \$748,293. The missing vehicles were:

- 1 BMW i8
- 2 Range Rovers
- 1 Lotus Elise
- 1 Jaguar F Type
- 1 Maserati GranTurismo

Detective Goodman reviewed the surveillance footage and saw two people enter the dealership, break the glass barrier between the showroom and the office with an unknown object, throw handfuls of keys into a pillowcase, and run from the dealership.

The suspects were on foot for the duration of their appearance on camera, so there was no identifying information from a getaway car. Moreover, the culprits were wearing masks and hooded jackets. The only information Detective Goodman gleaned from the footage was that there was a burglary committed by at least two individuals who were each between 5’9” and 5’11” tall and who were each average weight.

The police department put out a notification through its Facebook and Twitter accounts and to local news outlets, requesting that anyone with information contact the police. Dozens of calls and tips poured in. Most of them were useless, but two were helpful:

1. An anonymous woman reported that she was driving through Dubell at 3:00 AM that night and was behind a BMW i8 without a license plate. She found that unusual, until she noticed the temporary “LAR” logo where the license plate was supposed to be. She assumed the dealer was just rearranging its inventory and that there must have been a “dealer tag” (a temporary license plate for auto dealers) somewhere else on the car. The car was traveling in front of her until it turned into a self-storage facility called Store-It-All.
2. Another anonymous tipster reported that he saw a flashy car turn into Store-It-All in the middle of the night. When asked what model of car it is, he said, “I don’t know. It was silver.” Three of the six missing vehicles were silver.

Detective Goodman went to Store-It-All to gather information. He showed his badge to the employee at the front desk, Jackie, and asked her to answer some questions. Jackie agreed. Detective Goodman asked Jackie whether she had seen anything unusual in the past few weeks. She replied, “I work at a storage facility called Store-It-All. I see something unusual every day. You’ll need to be more specific.”

Detective Goodman said, “Okay, do you have facilities where someone could store a car?” Jackie replied that they have units of various sizes and about fifty of the facility’s units are designed to function like one-car garages. Detective Goodman asked several follow-up questions about whether Jackie knows of any customers who use the units to store cars. She said, “We’re in Dubell, where people have luxury cars they want to store safely. We have lots of clients who store their cars here. What is it you’re looking for?”

Goodman explained that he had received tips that suggest that there may be stolen vehicles being stored on Store-It-All’s premises and asked to look in the units that could accommodate any of the vehicles. Jackie said, “Get a warrant.”

Frustrated by Jackie’s belligerence and her unwillingness to aid in the investigation, Detective Goodman said, “I don’t need a warrant. We can do this the easy way or the hard way. The easy way is: you let me look around. The hard way is: I cut the locks to all the storage units and let myself in.” Jackie, thinking she was calling his bluff, said, “Do what you want. I’m not getting involved.”

Detective Goodman called for backup, and two more officers arrived. They approached every ground-level storage unit with a door large enough to fit a car. On these units, they cut the locks, opened the doors, and peeked inside. Through this process, they found all six cars. Now, they just needed to identify whose storage unit it was.

Detective Goodman knew Jackie was going to be uncooperative if he asked her for the records. He had an officer stay on the scene to prevent anyone from removing the stolen vehicles. He asked

the officer to call him when the shifts changed and another employee arrived. Three hours later, Detective Goodman received the call that Jackie left and another employee arrived.

Detective Goodman returned to Store-It-All and decided to take a different approach with this employee. He entered the office, showed his badge, and said, "There are six stolen vehicles on the premises. We know they are in storage lockers 8, 11, 23, 17, 20, and 12. I need you to tell me who the renter is for these units." The employee, Sam, cheerfully replied, "Sure. Let me go check." Sam searched the computer system and said, "Those units belong to someone named John Smith. The address is 101 E. 3<sup>rd</sup> Street in Hillview." Detective Goodman thanked Sam for his help and returned to his office at the station.

Knowing that searching such a generic name would not help, he performed an address search and found that the home was occupied by Paul Carlson. Detective Goodman and two other officers went to 101 E. 3<sup>rd</sup> Street and knocked on the door. A man answered. Detective Goodman said, "We're looking for Paul Carlson, also known as John Smith." The man turned around and ran through the house, towards the back door. The two officers ran in after him. Detective Goodman walked in the house and started looking around. In the linen closet, he found a pillowcase with 27 keys to luxury cars. The officers caught Carlson while he was attempting to climb over his privacy fence. The officers arrested him.

At the station, the officers attempted to ask Carlson questions about his accomplice and the burglary. Carlson said, "I'm not answering any questions without my lawyer." The police ceased the interrogation and allowed him to call our office. I arrived at the station to assist. Carlson has not given any information to the police besides standard identifying information common in booking procedures, such as his name, address, and fingerprints.

The police sent the information they gathered in their investigation to the prosecutors, who have charged Mr. Carlson with several offenses, most significantly, commercial burglary.

**TRIAL COURT OF COLUMBIA COUNTY, STATE OF FRANKLIN**

STATE OF FRANKLIN :  
 :  
v. : **CRIMINAL 22-101-1**  
 :  
PAUL CARLSON :

**ORDER**

**AND NOW**, this \_\_\_\_ day of \_\_\_\_\_, 2022, upon consideration of Defendant’s Motion to Suppress Physical Evidence, it is hereby **ORDERED** that the Motion is **GRANTED**.

It is so ORDERED.

BY THE COURT:

\_\_\_\_\_  
The Honorable Joseph Justice  
Trial Court Judge

**TRIAL COURT OF COLUMBIA COUNTY, STATE OF FRANKLIN**

STATE OF FRANKLIN :  
 :  
v. : **CRIMINAL 22-101-1**  
 :  
PAUL CARLSON :

**DEFENDANT’S MOTION TO SUPPRESS  
PHYSICAL EVIDENCE**

Paul Carlson, by and through his attorneys, [NAME 1], [NAME 2], and [NAME 3], of Defense Firm, respectfully moves the Court to suppress all physical evidence, including derivative evidence, seized as a result of the illegal search. In support of this Motion, the defense states:

1. [facts and assertions in numbered, summary form using persuasive phrasing/language] (see sample – make sure the numbered list doesn’t indent additional lines further than this one.)

**WHEREFORE**, for the reasons set forth in this Motion and accompanying memorandum of law, Paul Carlson respectfully moves the Court to grant the instant motion to suppress.

Respectfully submitted,

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[NAME]



**TRIAL COURT OF COLUMBIA COUNTY, STATE OF FRANKLIN**

STATE OF FRANKLIN :  
 :  
v. : **CRIMINAL 22-101-1**  
 :  
PAUL CARLSON :

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S  
MOTION TO SUPPRESS PHYSICAL EVIDENCE**

[Application of law to facts – use the cases from class and reason by analogy if necessary to make your arguments]

**WHEREFORE**, for the foregoing reasons, defendant Paul Carlson, respectfully requests this Court to grant the instant Motion in its entirety and suppress all physical evidence seized or, in the alternative, grant a hearing on this Motion.

Respectfully submitted,

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[NAME]

**CERTIFICATE OF SERVICE**

We, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, of Defense Firm, hereby certify that we caused a copy of the attached Defendant's Motion to Suppress Evidence, and accompanying Memorandum of Law, to be filed and served by hand delivery upon Oscar Chase, Assistant District Attorney, 123 W. 10<sup>th</sup> Street, Bexwick, Franklin 99999.

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[NAME]

DATE: April 11, 2022

## Motion to Suppress Grade

Team: \_\_\_\_\_

	<b>Points Earned</b>	<b>Points Available</b>
Overall Persuasiveness (reasoning, engagement with the facts, logic, citations, and zealous advocacy)		25
Grammar, Tone, Spelling		10
Participation in class on Thursday 3/21		5
Subtractions for lateness or other failure to conform with instructions (including formatting)		
<b>Total</b>		40